COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

In re: Petition of City of Waltham Regarding Streetlight Purchase	)	D.T.E. - 02 - 11

Brief in Support of City's Petition

G.L. c 164 s 34A requires the Company to sell the streetlight equipment acquired by a municipality for the "un-amortized investment allocable to such acquired equipment." It is the City's position that the Company has failed to meet its statutory obligation to provide a purchase price that meets this statutory standard. In response to the City's petition for dispute resolution, the Company has raised both procedural and substantive arguments. We will address the procedural issue first.

A Section 34A streetlight dispute is not an adjudicatory proceeding.

With respect to procedure, it is the Company's view that this matter needs to be resolved using the trial procedure outlined in the Department's regulations for adjudicatory proceedings. The Company claims that the Company is entitled to a hearing as a matter of right and, therefore, this streetlight dispute must be treated as an adjudicatory proceeding under Chapter 30A. In particular, the Company argues that Company's procedural rights are governed by 220 CMR 1.04(5), regarding motions in general, 220 CMR 1.06(6)(e), regarding motions to dismiss, and 220 CMR 1.11(7), regarding the consideration of documents filed after a hearing. All three of these Department regulations are limited by the express language of the Department's regulations for procedural rules to be employed in *adjudicatory proceedings*.

220 CMR 1.04(5) expressly limits the right to make motions in general to parties in adjudicatory proceedings. Subsection (a) is limited to motions after an "initial pleading," which is a defined as "any paper or document by which an *adjudicatory proceeding* may be commenced." Subsection (b) requires that any such motion shall not delay the "*adjudicatory proceeding.*" And subsection(c) limits the rights to make pre-hearing motions to any "party," which is defined as persons whose legal rights are being determined in an *adjudicatory proceeding*.

220 CMR 1.06(6)(e), limits the right to make a motion to dismiss to parties in an adjudicatory proceeding: "A party may move. . . for dismissal." The Department's regulations distinguish the term person from the term party. A "party" is a specifically named person whose rights are being determined in an *adjudicatory proceeding.*

220 CMR 1.11(7), regarding the procedural steps to file post hearing documents, applies to "parties." A "party" is a specifically named person whose rights are being determined in an *adjudicatory proceeding*.

If this dispute is an adjudicatory proceeding, the Company is within its rights to use these procedural delay tactics. If this is not an adjudicatory proceeding, the Company is not within its rights to use these procedural delay tactics.

The Company asserts two arguments to support its claim to a hearing as matter of right. First, the Company makes a claim to a mandatory hearing as a matter of constitutional right. Second, the Company makes a claim to a mandatory hearing as a matter of statutory right. The Company states: "This proceeding meets the definition of an "adjudicatory proceeding" under G.L. c.30A s 1(1) because the legal rights of the Company are required by both constitutional law and statutory law to be determined after an opportunity for an agency hearing."

There is no constitutional right to a hearing.

The Company cites Cella, Administrative Law and Practice, section 1759 and two Massachusetts cases, to support its claim to a constitutional right to a hearing in this streetlight dispute. Unfortunately, the Company quoted very selectively from section 1759. A more forthcoming reference to the section cited from the Cella treatise on Administrative Law would have included the following language:

> " The Milligan and Marmer cases both dealing with professional and occupational licensure, are the only two cases in which the Supreme Judicial Court has recognized the existence of a constitutional right to a hearing before a state administrative agency. *In all other cases to come before the court where the issue has been raised, the Court has refused to recognize the existence of a constitutional right to a hearing*." (Emphasis added)

The Milligan and the Marmer cases are both cited by the Company in support of its constitutional claim in this streetlight dispute. The narrow constitutional right recognized by the court in those two cases dealt with the denial of an individual's right to earn a livelihood (Pharmacist's license in Milligan and Chiropractor's license in Marmer). In the Milligan case, the court stated:

> "A state cannot exclude a person from the practice of an occupation in a manner or for reasons that contravene the due process or equal protection clause of the Fourteenth Amendment. . ." (358 Mass 13)

The Milligan and Marmer cases are hardly applicable in this case. The general rule regarding the absence of any constitutional right to a hearing, before a state agency can make a policy determination in a particular case or fact situation, was articulated by the courts in Carlisle v Department of Public Utilities (353 Mass 722):

> "Another impermissible contention of the petitioners is that the order authorizing the preliminary survey was the result of an adjudicatory proceeding under G.L.c30A s1. That this was a political question of governmental policy has been too often determined in analogous cases to require discussion."

No constitutional right to a hearing before the Department has ever been recognized by any court in this state. None exists in this case.

There is no statutory right to a hearing.

The second argument advanced by the Company is equally specious. The Company argues that, because a hearing is required to resolve complaints concerning "effective competition" and "vertical or horizontal market power abuses" (G.L. c 164 s 1F(3)), a hearing must be required in the 60 day dispute resolution process required for streetlight disputes (G. L. c 164 s 34A). The Company refers to the Section 1F Dispute requirements as "analogous dispute-resolution requirements."

Section 1F is a consumer protection provision. It has absolutely nothing to do with section 34A streetlight disputes. The first paragraph of Section 1F establishes the scope and purpose of this section:

> "The department is hereby authorized and directed to require electric companies. . . . to accommodate retail access to generation services and choice of suppliers by retail customers. . . The department shall promulgate rules and regulations to provide retail customers with the utmost consumer protections contained in law, including but not limited to the following provisions":

The "following provisions" referenced in that first paragraph include: Section 1F(1), which relates to licensing requirements and Section 1F(2), which relates to unauthorized switching. The regulations authorized by Section 1F(3) are "to promote effective competition." The disputes mechanism in 1F(3) is designed to provide a remedy for consumers who are alleging that "vertical or horizontal market power abuses" have compromised that consumer's right to free and effective choice of generation services.

Section 34A does not deal with retail choice, or effective competition, or generation services. Section 34A provides a limited purpose dispute mechanism regarding the regulated distribution tariff authorized by that section. Unlike Section 1F disputes regarding retail choice, Section 34A streetlight disputes are required to be resolved in 60 days. Unlike Section 1F retail choice disputes, Section 34A streetlight disputes do not include any statutory right to a hearing.

Section 34A does not include any right to a hearing. No amount of linguistic gymnastics can read a hearing requirement into that law.

It is interesting that the Company chose to ignore the 60 day dispute resolution process for property damage claims in the section immediately preceding Section 1F. G.L. c 164 s 1E provides a 60-day dispute resolution process for certain damage claims, which dispute resolution process does *not* include a right to a hearing. According to the Company, the legislature intended to include a mandatory hearing requirement in Section 34A, and presumably also in Section 1E. The Company argues that since these various dispute resolution procedures were all part of the Utility Restructuring Act, the hearing requirement in one dispute resolution procedure somehow extends to the other dispute resolution procedures. Based on the Company's logic, the legislature intended to transform these two 60 day dispute resolution processes into protracted adjudicatory proceedings. Based on the company's logic, the legislature simply forgot to include the language establishing the hearing requirement.

The motion to dismiss and the motion to oppose the consideration of company documents, regarding the timing of the capital additions to the various accounts, are not appropriate motions in a streetlight dispute.

The express language of the Department's regulations limits the right to make these motions to parties in an adjudicatory proceeding. Since a streetlight dispute is not an adjudicatory proceeding, the Company has no right to make these motions in this dispute.

The burden of proof in an adjudicatory proceeding is different than the burden of proof in a streetlight dispute. In DTE 01-25, the Department required the utility to support its town specific price with town specific data regarding premature retirements, or in the absence of such Town specific data, offer a price that did not take any premature retirements into consideration. The municipality does not have the burden of establishing the purchase price that complies with the statute, or the burden of challenging the Company's price with substantial evidence.

The 60-day time frame for resolving streetlight disputes is inconsistent with the use of time consuming adjudicatory procedure to resolve streetlight disputes.

It is the City's view that the City's right to resolution of this dispute within 60 days has been compromised by the Company's focus on the procedural rules associated with adjudicatory proceedings rather than the substance of this non-adjudicatory streetlight dispute. The Company has attempted to use the rules of adjudicatory procedure to frustrate the Department's investigation of the facts in this non-adjudicatory streetlight dispute. The Company's position in this case can be summarized as follows: This is the way we have done it elsewhere, prove that we are wrong, and we will use trial type procedural gimmicks to delay this process and prevent the consideration of Company documents that are damaging to the Company's position.

On Monday April 29, 2002, 100 days after the City filed its petition for 60-day dispute resolution, the Company filed a document that explained the Company's legal basis for treating this streetlight dispute as if it was an adjudicatory proceeding. In this document, the Company has claimed a constitutional right to hearing before the Department that has

never been recognized by any court in Massachusetts. In this document, the Company has asserted a statutory right to a mandatory hearing that is non-existent. In the process, the Company has delayed this dispute well beyond the 60 timeframe specified by the statute.

It is the City's view of settled law that the Company is not entitled to a hearing as a matter of right in this streetlight dispute, that this matter, therefore, is not an adjudicatory proceeding, and that the procedural arguments advanced by the Company are simply a strategy to divert attention from the substance of this dispute.

This is not an adjudicatory proceeding. The Company simply has no standing to make any of the procedural motions that it has made in an attempt to distract attention from the substance of this dispute.

The Company's purchase price does not comply with Section 34A.

It is the City's position that the Company has overvalued the streetlight equipment that the City elected to acquire, and undervalued the streetlight equipment retained by the Company. The City does not challenge the net book value calculation of the entire streetlight plant in the City. The City accepted the Company's calculation of that overall plant value. The City's only issue, and the issue that the Company and the City agreed to reserve for the Department's determination in this proceeding, deals with the allocation of that agreed upon plant value between the municipal streetlights sold to the City and the private streetlights retained by the Company.

From a contractual perspective, the net book value of the entire streetlight plant was $663,547.35 not $668,500.69.

The Company prepared a calculation of the overall plant value of the streetlight system in Waltham and provided that calculation to the City. That Company calculation was introduced into the hearing record as City Exhibit W-2. The net book value of the entire streetlight plant, and the net book value of the two subcategories of plant value for the municipal and the private lights, are summarized on page two of Exhibit W-2, as follows:

Streetlights sold	$674,159.42
Streetlights retained	($10,612.07)
Net Value Entire plant	$663,547.35

The $674,159.42 purchase price that appears in Article 2 of the purchase and sale agreement (City Exhibit W-3, page 1) is taken directly from this Company calculation of the plant values. The net book value of $663,547.35 is not at issue in this proceeding. The only issue, which was specifically reserved for this dispute in Appendix C of the purchase and sale agreement (See page 28 of City Exhibit 3), is the allocation of that $663,547.35 between the streetlights sold and the streetlights retained.

As a preliminary matter, we wish to point out that the purchase price calculations prepared by the Company in DTE 1-1 and DTE 1-2, are based on a net plant value of $668,500.69. This is approximately $5,000 higher than the net plant value that was used to establish the purchase price in the purchase and sale agreement executed between the City and the Company. The difference between the $663,547.35 net plant value in presented in the City Exhibit W-2 and the $668,500.69 net plant value that appears in DTE 1-1 and DTE 1-2, is not the issue that was reserved for dispute resolution by the purchase and sale agreement, and it is not the issue that was presented by the City in its petition for dispute resolution. Under Article 24 of Purchase and Sale Agreement, the parties have agreed, as a general matter, to resort to mediation, prior to bringing a dispute before the Department. The dispute framed in the City's petition is a specifically agreed upon exception to the requirement of mediation prior to bringing a dispute before the Department.

This $5,000 difference of opinion is not a major issue. The Department may conclude that the statutory requirement to sell the streetlight plant for the "unamortized investment" may trump the contract language regarding this issue. We are simply raising this issue so that the Department can decide whether the statutory language does trump the contract language on this issue.

The Company has the affirmative obligation to develop a purchase price that complies with the statute.

In DTE 98-89, the Department determined that the purchase price developed by the Company did not comply with the statute and directed the Company to prepare a new purchase price using either of three methods:

> " (1) use the streetlighting equipment depreciation rate proposed by the Towns; (2) allocate the streetlighting-specific depreciation rate from the last depreciation study to the gross streetlighting plant in service, net of accumulated depreciation, for the period from the last depreciation study; or (3) perform a depreciation study, and allocate a streetlighting-specific depreciation rate to the gross streetlighting plant in service, net of accumulated depreciation to be applied to streetlighting equipment during the period from the last depreciation study." (DTE 98-89, page 5)

The Department did not make a choice in the Lexington dispute between a purchase price calculated by the Towns and the purchase price calculated by the Company. The Department directed the company to prepare a purchase price that complied with the statute and gave the Company three choices of methodologies for meeting that statutory obligation.

The City believes that NSTAR has the burden of calculating the net plant value of the NSTAR owned streetlights that NSTAR proposes to sell in Waltham. The Company's position is that the Company is free to propose any price, no matter how unreasonable, and by doing so, transfer the burden to the City to calculate, and support with

professional witnesses, the net book value, on the Company's books, of the NSTAR owned streetlights. We disagree.

The language of the statute, and the DTE rulings interpreting that language, clearly gives the Company the affirmative obligation to offer a purchase price that complies with the statute. The Company has not done so in this case.

The Company has the affirmative obligation to develop a purchase price that fairly establishes the un-amortized investment in Waltham based on Waltham specific data.

In DTE 01-25, NSTAR attempted to defend a "service territory wide" purchase price formula even though it over valued the streetlights in the three communities of Edgartown, Harwich, and Sandwich. The Department rejected this service territory wide formula ". . . because it: (1) automatically increases the selling price of streetlights by a cost for early retirements whether or not early retirements actually took place in the Towns; (2) causes the selling price to be influenced by factors extraneous to the Towns; and (3) does not permit over-depreciated streetlights to have a negative value." (DTE 01-25, page 6)

The ruling in DTE 01-25 supported the calculation of un-amortized investment in Edgartown, Harwich, and Sandwich, without taking into consideration any reduction in the accumulated depreciation due to premature retirements of the streetlights in those three communities, because the Company was unable to provide any town specific data regarding early retirements. The Department in that case said:

> '. . .However, the Towns did not include treatment of the cost of early retirements in calculating the value of their streetlights in part because Commonwealth could not provide Town-specific information on those costs. . . . In the absence of Town-specific data on the cost of early retirements, unamortized investment shall be determined by subtracting the accumulated depreciation reserve from the original cost of the community's streetlights being acquired." (DTE 01-25, page 6)

The Company has the affirmative obligation to support the Company's calculation of un-amortized investment in Waltham with Waltham specific data.

The Company has not offered any Waltham specific information to support the bizarre allocation in this case.

In Step 2 of the Company's calculation of net plant value in Waltham, the Company claims that the Company is simply allocating the value of the support equipment in four support accounts between account 636 (which is primarily private lights) and account 635 (municipal lights). Because the combined net value in the four support accounts has a negative net value, one would expect this allocation to reduce both the net values in account 635 and 636 by some fraction of that total negative net value. However, the

Company's allocation reduces the net value of the private lights by an amount that is more than the reduction that would be achieved if 100% of that support equipment, and 100% of that negative net value, were allocated to the private lights.

In order to support the bizarre allocation in this case, there would have to be some documentation or testimony to support the proposition that the support equipment supporting the municipal lights (account 635 lights) was newer than the support equipment supporting the private lights (account 636 lights). There is no other way to justify the allocation in this case. Yet, when offered the opportunity to state on the record, under oath, that the support equipment supporting the municipal streetlights was newer than the support equipment supporting the private lights, the Company declined to do so.

When questioned directly on this issue by Mr. Hanley at the hearing, the following exchange took place at page 73 of the hearing record:

> Mr. Hanley:
>
> "Would you agree with this, that under your method of . . . allocating these costs, that what you're saying is for the uncommon equipment, which we agree is old equipment probably for both, would you say that it's older, though, for the commercial than it is for the municipal . . .?"
>
> Mr. Robinson:
>
> "The amount that gets allocated would be more. Wait a minute. Which way does this go? I'm sorry. I retract that statement. When we talked about this at the beginning of the hearing, we allocated gross investment and accumulated depreciation based on the relative share of municipal and commercial streetlighting equipment. So if you look at exhibit W-2, and you look at the second page, you look at step 2, you see the allocation for a total of 632, 633, 634 and 637, $316,409.15 for gross investment and $346,064 for accumulated depreciation. That is prorated to the municipal and commercial accounts based on their prorated share of the total for the 635 and 636 that you see right under on page 2, the million 96,719 and 2 cents for gross investments and $403,516.38. Have I confused you?"
>
> Mr. Hanley:
>
> "I don't know if you answered my question."

The Company's own schedule of additions for each of the accounts 632 through 637 (City Exhibit W-4), demonstrates why the Company was unwilling to answer Mr. Hanley's question in a direct and straightforward manner.

The Company's documents do not support the proposition that support equipment supporting the municipal lights is newer than the support equipment supporting the private lights.

Even a cursory review of the Company's history of additions in each of these accounts reveals the following:

1) The net book value of the 632 account represented approximately 50% of the net book value of the entire streetlight system that was carried over onto to the Company books in 1944, a point in time when there was no appreciable 636 account values in place in the City.

2) The Company's recorded history of the additions to account 632, 633 and 634 indicates that most of the improvements in these accounts were either carried over in 1944 or added between 1945 and 1960. There was also a significant carry-over in 1944 to the 635 account and significant additions in the same 1945 to 1960 time period to the 635 account. By contrast, the only additions to the 636 account in the same period were in 1955 and 1957, totaling approximately $2,900.

3) The consistent additions to the 636 account began in 1965 and peaked in 1986.

4) The net book value of the 636 account started at approximately $3,000 in 1965 and peaked at $154,000 in December of 1986.

5) In the same time frame (1965 to 1986), there is no discernible increase in the additions to the 632, 633, or 634 account.

6) In the same time frame, there is a discernible increase in the additions to the 637 account. The net book value of the 637 account peaks in the same year as the 636 account (1986).

The following chart shows the average annual additions (taken directly from the additions column of exhibit W-4 for the years shown) in each of the accounts, rounded to the nearest thousand dollars (with '000 omitted):

Annual Average Additions

Time Frame	Support Accounts 632	633 / 634	637	Municipal 635	Private 636
1944 carryover	42	0	2	45	0
1945 – 50	1	**11**	1	7	0
1951 – 60	**4**	2	3	15	0
1961 – 70	1	2	8	22	1
1971 – 80	0	1	18	40	9
1981 – 86	1	4	**27**	17	**22**
1987 – 92	1	3	0	**142**	9

In general, we grouped the above expenditures in 10-year intervals. We grouped the six years between 1981 to 1986 because those years coincide with the years of peak additions activity in the 636 account. Similarly, we grouped the six years between 1987 and 1992 because those six years coincide with the peak additions activity in the 635 account. The purpose of summarizing the additions in this fashion was to determine if there were any obvious correlations between the additions activity in the support accounts and additions activity in the 635 or 636 account. We combined the values for the 633 and 634 accounts because they both relate to underground installations. In each column, we have shown in bold the period of peak annual average additions.

Focusing on the support accounts first, the history of the additions for the three support accounts, 632, 633 and 634 indicates that the major additions in these accounts were in the 1940's, and 1950's. The average annual additions after 1960 never reach the peak levels of these early years. By referring to exhibit W-4, you will note that the net book value of the 632 account peaked in 1955 and has not had a positive net book value since 1970. The net book values of the 633 account and 634 account peaked in 1946 and neither account has had a positive net book value since 1975.

The timing of the additions to the support account 637 is different than the timing of the additions to the other three support accounts. The additions to the 637 account increase after 1960 accelerate in the 1970's and peak in the 1981 to 1986 time frame.

There is a correlation between the additions activity in account 636 and 637.

The 637 account is the only support account in which there is a discernible increase in additions activity that corresponds with the increase in additions activity in the 636 account. Both accounts show an initial increase in activity in the 1961 to 1970 period, which activity accelerates for both accounts in the 1971 to 1980 time period, which annual average additions activity peaks for both accounts in the 1981 to 1986 time period (which is also the time period when the additions activity in the 635 account is falling off).

There is no correlation between the additions activity of any of the support accounts and the peak additions activity of the 635 account.

None of the support accounts show a discernible increase in additions activity coinciding with the six years of peak activity in the 635 account (1987 – 1992). This is reasonable because of the nature of the improvements to the 635 account between 1987 and 1992. This was the period of time when Waltham was converting approximately 5,000 municipal streetlights from mercury vapor fixtures to sodium vapor fixtures. The removal of a mercury fixture from the end of the bracket, and the replacement of that mercury fixture with a sodium fixture, does not require the replacement of the underground conductor or the underground conduit. The retirements of the mercury fixtures did, however, result in the dramatic depletion of the accumulated depreciation reserve. You will note in exhibit W-4 that the accumulated depreciation in account 635 drops from a positive $249,590 in 1991 to a negative $53,295 in 1992. This drop in the accumulated depreciation is directly attributable to the retirement of the mercury lights, because the accumulated depreciation account was used to fund those retirements.

The relative amount of accumulated depreciation in accounts 635 and 636 does not support the conclusion that the support equipment supporting the 635 account is newer than the support equipment supporting the 636 account.

Contrary to the implication that the Company attempted to create in the hearing, the relative amount of accumulated depreciation in accounts 635 and 636 does not support the proposition that the support equipment supporting the 635 account is newer than the support equipment supporting the 636 account. The theory advanced by the Company's attorney (but not confirmed by the Company's witness) was that it was reasonable to assume that the support equipment supporting the 635 account would have a similar vintage as the new sodium fixtures in Waltham. The absence of any additions activity in the support accounts that was coterminous with the sodium fixture additions and the mercury fixture retirements in the 1987 to 1992 time period clearly refutes this theory. At the very same time that that accumulated depreciation in account 635 was being depleted, and the gross investment in account 635 was being dramatically increased, there was no corresponding additions activity in any of the four support accounts.

In the City's view, this explains why the Company opposed the introduction of this Company document. This is also the reason Mr. Robinson dodged Mr. Hanley's question regarding this issue at page 73 of the hearing record.

The streetlight tariff paid by the account 636 streetlights includes no cost for underground service.

The streetlight tariff for the streetlights in the 636 account supports the notion that none of the improvements in the 633 and 634 accounts, were installed to support the streetlights in the 636 account. All of the streetlights in this account (municipal and private) are serviced by a common streetlight tariff which the Company refers to as the Outdoor Lighting Rate S-3. According to the Company's S-3 Outdoor Lighting Tariff, service is provided under either of two installation scenarios:

> Installation Scenario "A" provides that " Lighting service under this rate shall be installed on an existing approved Company pole or post carrying utilization voltage. . ."
>
> Installation Scenario "B" provides that "The Company will furnish, install and maintain one pole and section of secondary wire not to exceed 150 feet for lighting service supplied under this rate."

More than two thirds of the private lights in the Company's account 636 computerized streetlight listing (City Exhibit W-5) are category A installations serviced at outdoor rates for category "A" installations. This means that these lights were installed on existing Company poles carrying utilization voltage. In other words, there was no need to make any improvements in any of the support accounts to support more than two thirds of the private lights in the 636 account. These lights are identified by the Code "A" in the second column of the Exhibit W-5. (AA, or AAA indicates that two or three category A lights were installed on a single company approved pole.) If the Company was simply installing an S3 light on a pre-existing pole, there was no need to install any equipment that is normally allocated to the four support accounts.

Less than one third of the private lights in the Account 636 listing (Exhibit W-5) are category "B" lights. These lights are identified by the Code "B" in the second column of Exhibit W-5.

The four private lights servicing LJH Associates, on page 2 of W-5, illustrate this coding system. The first light is a category light 'A" installed on an existing Company pole carrying utilization voltage (presumably near the street, and therefore relatively proximate to the existing pole mounted transformers). The other three lights are installed on three dedicated poles, each of which may be serviced by 150 feet of overhead wire. As much as 450 feet of overhead wire may separate the third category B installation from the first category "A" installation.

The fact that this outdoor rate does not contemplate any underground improvements is supported by two aspects of the tariff. First, the description of the category "A" and "B" installation does not include any underground conduit. (See above discussion) Second, the monthly S3 distribution tariff is equivalent to the S1 Tariffs for overhead (as opposed to underground) service. The following chart compares the NSTAR S1 and S3 tariffs for a 9500 lumen sodium vapor streetlight:

	S1	S3
Overhead Service on Existing Pole	$6.90	$6.91 (S3 A)
Overhead Service on Dedicated Pole	$11.40	$11.41 (S3 B)
Underground Service on Dedicated Pole	$22.20	No comparable Rate

The S-3 outdoor streetlight tariff, by its very terms, supports the analysis offered above regarding the lack of correlation between the additions activity in the 633 and 634 accounts and the 636 account. There were no increased additions to the underground conductor or the underground conduit accounts, contemporaneous with the increased additions to the 636 account, because no such installation is contemplated for category A or category B S-3 streetlight installations.

For almost 60 years, streetlights in the 635 account have been paying underground streetlight tariffs that include an amount to reimburse the company for depreciation on that underground equipment. The net book value of these underground support accounts has been negative for almost 30 years, because the City has been paying for the excess depreciation, in the form of underground streetlight tariffs, on this very old, long-lived equipment, well beyond the assumed depreciable life of this equipment. The Company is now proposing an allocation formula that allocates almost all of the negative depreciation associated with this underground equipment to the private streetlights, even though this equipment was not installed to support those private lights, and even though the municipal streetlights have been paying streetlight tariffs that included 100% of accumulated depreciation that the Company now wants to allocate to the private lights.

The S3 tariff does contemplate support from the 632 account, and potentially from the 637 account.

201 of the private streetlights in the 636 account, that are located on category B overhead served poles, did require some overhead streetlight wire to support those 201 installations. But that overhead conductor expense is minimal compared to overhead wire in account 632 that supports the balance of the streetlight infrastructure in Waltham, which account 632 investment represented almost 50% of the net value of the streetlight plant that was carried over on the books in 1944. There was no appreciable investment in the 636 account in 1944.

The support equipment necessary to support the 201 category "B" installations servicing private customers, listed in W-5, would be the dedicated overhead wire to connect these 201 dedicated poles to the existing secondary, and potentially, additional pole mounted or pad mounted transformers.

The need for a transformer dedicated to streetlight service (account 637) is not triggered by the addition of a streetlight to an existing pole "carrying utilization voltage." The need for a transformer dedicated to streetlight service is potentially triggered when streetlights are added at a point distant from a "pole carrying utilization voltage."

It is interesting to note that the one support account, which shows increased improvement activity that coincides with the concentrated improvements in the 636 account, is the support account that includes transformers (account 637). Both of these accounts (636 and 637) show increased additions in the 1970 to 1986 time frame. Both accounts reached their peak net value in 1986. And both accounts had their highest concentration of additions in the 1981 to 1986 time frame.

Conclusions

The record supports the fact that, in the name of allocating the values associated with the support equipment between the municipal light and the private lights, the Company reduced the value of the private lights by an amount that was greater than the total reduction possible if 100% of that equipment was allocated to the private lights.

The Company has not offered any Waltham specific facts that would justify this inequitable allocation.

The Company declined to offer any evidence, when asked by Mr. Hanley to do so, to demonstrate that the support equipment supporting the municipal lights was newer than the support equipment supporting the private lights.

The Company has opposed the introduction of Company records that refute the proposition that the support equipment supporting the municipal lights is newer than the support equipment supporting the private lights.

The absence of Company data to support this inequitable allocation is no different than the absence of Company data regarding premature retirements in Edgartown, Harwich and Chatham. The Company has failed to support its calculation with Waltham specific data.

The record supports the fact that the additions to account 636 do not coincide with any additions to account 633 (underground conduit) or to account 634 (underground conductor).

The record supports the fact none of the 636 lights are paying "underground" streetlight tariffs.

The record does not support the allocation of any values associated with accounts 633 (underground conduit) and 634 (underground conductor) to the private lights (account 636 lights).

The record supports the conclusion that the major additions to the 632, 633 and 634 accounts predated the installation of the account 636 streetlights in Waltham.

Account 637 is the only support account in which the additions activity is contemporaneous with the account 636 additions activity. Account 637 is the only support account with a positive net book value.

By effectively allocating almost all of the negative value associated with accounts 632, 633 and 634 to the private lights, and almost all of the positive value of 637 to the municipal lights, the Company has done the exact opposite of what is fair and appropriate in the case of Waltham. The Company's purchase price does not comply with the statute.

Respectfully Submitted,

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